

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:16-CR-121-A
)
Government,)
) FORT WORTH, TEXAS
VERSUS)
) OCTOBER 21, 2016
TIMOTHY ERIC NIMERFROH (05),)
)
Defendant.) 11:34 A.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S :

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P R O C E E D I N G S

October 21, 2016 - 11:34 a.m.

COURT SECURITY OFFICER: All rise.

(Judge enters)

COURT SECURITY OFFICER: Please be seated.

THE COURT: Okay. I'm calling for sentencing Number 4:16-CR-121-A. This time it's United States of America versus Timothy Eric Nimerfroh.

And Mr. Smith is here for the government, and Mr. Green's here for the defendant.

Mr. Green, why don't you and your client come to the podium.

Mr. Nimerfroh, state your full name for the record.

THE DEFENDANT: Timothy Eric Nimerfroh.

THE COURT: Okay. You appeared before me -- let me get the exact date -- on June 2, 2016, when you entered a plea of guilty to Count 1 of a two-count information the government filed May 18, 2016, and that count charged you with conspiracy to possess with intent to distribute a controlled substance, having reference to methamphetamine. Of course, we're here today for sentencing based on the conviction resulting from that plea.

Mr. Green, did you and your client receive in a timely manner the Presentence Report and the addendum to it?

MR. GREEN: We did, Your Honor.

1 THE COURT: And did the -- actually, there were two
2 addendum. Did you receive both of them in a timely manner?

3 MR. GREEN: Yes, Your Honor.

4 THE COURT: And did you and your client read all
5 those items and then discuss them with each other?

6 MR. GREEN: Yes, Your Honor.

7 THE COURT: There were some objections to the
8 Presentence Report. You've seen the government's response to
9 those objections, and the probation officer's response, and my
10 order expressing my tentative conclusion that they are without
11 merit.

12 Do you still want to pursue any of those objections?

13 MR. GREEN: Some of them, Your Honor, yes, sir.

14 THE COURT: Okay. Tell me which ones you want to
15 pursue by number.

16 MR. GREEN: Thank you, Your Honor.

17 We're on Defendant's First Amended Objections to the
18 Presentence Report Investigation Report dated September 29.
19 We are --

20 THE COURT: Let me find that. Now, does that
21 replace the original objections?

22 MR. GREEN: Yes, Your Honor, because I withdrew one
23 of the objections and supplanted it with these.

24 THE COURT: Okay. Tell me -- we'll refer then to
25 the amended objections the Court received on September 29.

1 How about objection number 1?

2 MR. GREEN: Objection number A, that he did not
3 maintain a residence for the purpose of storing or
4 distributing methamphetamine.

5 THE COURT: You're still urging that?

6 MR. GREEN: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. GREEN: I'm going to waive number C, the amount
9 of methamphetamine attributed to defendant by Mandy Turner.

10 THE COURT: Okay.

11 MR. GREEN: Given that it doesn't affect his
12 guideline range and so many people have --

13 THE COURT: Okay. I'm just wanting to know which
14 ones you're urging now.

15 MR. GREEN: Okay. Number D, the leader/organizer
16 enhancement is not proper, we are urging.

17 THE COURT: Okay. How about C in the middle of page
18 3?

19 MR. GREEN: No, Your Honor. We're waiving the Mandy
20 Turner objection.

21 THE COURT: Okay. And you're urging D?

22 MR. GREEN: A and D, Your Honor.

23 THE COURT: Okay. Let's go back and see what we're
24 talking about then.

25 MR. GREEN: And B, Your Honor -- sorry, my pages

1 stuck together -- and B.

2 *THE COURT:* Let's see. The A part of the objections
3 is that defendant did not maintain a residence for the purpose
4 of storing or distributing methamphetamine, and that's an
5 objection to the paragraph 42. I'm trying to find the
6 paragraph you're objecting to.

7 *MR. GREEN:* 42, Your Honor.

8 *THE COURT:* Okay. And apparently you're not
9 objecting to the facts that the probation officer relied on to
10 reach that conclusion, and you're simply objecting to the
11 conclusion.

12 *MR. GREEN:* Yes, Your Honor. Mr. Nimerfroh fully
13 admits that he was selling drugs at that hotel room, and he
14 bought drugs at other hotel rooms other people were selling
15 at. He's just saying that him and Ms. Frye actually lived
16 there when he left his wife, moved in with her, and then got
17 into all this trouble in this case. They were actually living
18 at the Fairfield Inn in Fort Worth.

19 *THE COURT:* Do you have any evidence you want to
20 offer in support of any of your objections --

21 *MR. GREEN:* No, Your Honor, just the facts --

22 *THE COURT:* -- either of the objections you're now
23 urging?

24 *MR. GREEN:* No, Your Honor. The facts that are just
25 in the PSR.

1 *THE COURT:* Okay. Well, the fact that he uses that
2 same place as his residence is not a reason for the probation
3 officer not to give the two-level increase. Hold on just a
4 minute.

5 I don't think -- from the information that the
6 probation officer has in the report, I don't think there's any
7 question but what the defendant was using those premises for
8 his drug-trafficking activities, and they were premises that
9 he had control over because he was renting them, so I'm going
10 to overrule that objection.

11 I think the probation officer correctly ascertained
12 that the facts recited in the Presentence Report supported the
13 two-level increase under 2D1.1(b)(12), and I find from a
14 preponderance of the evidence that that was a proper two-level
15 increase application.

16 Okay. Your D part that you're objecting to --

17 *MR. GREEN:* Paragraph 43, Your Honor.

18 *THE COURT:* The leader/organizer?

19 *MR. GREEN:* No, the next one is number B, Your
20 Honor.

21 *THE COURT:* B?

22 *MR. GREEN:* Yes, the importation enhancement.

23 *THE COURT:* Oh, well, you told me a minute ago, I
24 thought that was waived.

25 *MR. GREEN:* No, that was number C I waived. Sorry,

1 Judge, I didn't mean to confuse you.

2 THE COURT: Well, let me be sure I know what was
3 waived. I now show that C is waived?

4 MR. GREEN: Yes, Judge.

5 THE COURT: Is D as in dog waived?

6 MR. GREEN: No, D is not.

7 THE COURT: So the ones that were waived -- only one
8 was waived and that's C?

9 MR. GREEN: Yes, Your Honor.

10 THE REPORTER: Did you say C?

11 THE COURT: He said C is waived.

12 MR. GREEN: Yes.

13 THE COURT: Is that what you're asking?

14 THE REPORTER: Yes.

15 THE COURT: Well, I'm satisfied there's evidence --
16 sufficient evidence to support a finding that those drugs
17 were -- that the drugs that he was dealing with were drugs
18 that came up from Mexico.

19 I think it's common knowledge that when reference is
20 made in this part of the world to a cartel, they are talking
21 about the drug cartels in Mexico. Even the defendant referred
22 to his -- the drugs coming from a cartel, and used terminology
23 that they would be using in Mexico.

24 I'm going to overrule that objection. I think the
25 probation officer's correct, and I find from a preponderance

1 of the evidence that the drugs -- that he did deal in drugs
2 that were imported from Mexico.

3 Okay. Then that takes us to the D part on page 3?

4 *MR. GREEN:* Yes, Your Honor.

5 *THE COURT:* And that's the objection to the
6 organizer/leader two-level increase.

7 Well, the Presentence Report has -- recites facts
8 that would indicate that Frye and Allen were assisting the
9 defendant in his drug-trafficking activities. It would
10 appear to me that the probation officer -- and I find that
11 that is -- by a preponderance of the evidence, that that's so,
12 so it appears to me that the probation officer correctly
13 concluded that -- from the facts recited in the Presentence
14 Report, that he did qualify as -- for a two-level increase as
15 his role in the offense, so I'm going to overrule that
16 objection.

17 Okay. There being no further objections to the
18 Presentence Report, the Court adopts as the fact findings of
19 the Court the facts set forth in the Presentence Report as
20 modified or supplemented by the addendum and any conclusions
21 I've expressed -- any findings I've expressed from the bench,
22 and the Court adopts as the conclusions of the Court the
23 conclusions expressed in the Presentence Report as modified or
24 supplemented by the addendum, or either of the addenda in each
25 case, and any conclusions I've expressed from the bench.

1 The Court concludes that the total offense level is
2 39; that the guideline imprisonment range would be 360 months
3 to life, if the defendant had been charged with his true
4 offense conduct, but because of the charging decision, the
5 U.S. Attorney has created a 480-month maximum sentence, the
6 statutory maximum, so that makes the guideline range become
7 360 to 480 months; and that the supervised release range is 4
8 to 5 years; and that a fine range of \$25,000 to \$5 million is
9 applicable; and a special assessment of \$100 is -- would be
10 payable at the time of sentencing.

11 *(Bench Conference with Courtroom Deputy)*

12 THE COURT: And the Criminal History Category is VI,
13 if I left that out.

14 Okay. You can make whatever statement -- let's
15 see.

16 The government filed a Motion for Downward Departure
17 in this case?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: Okay. Do you have any evidence you want
20 to offer on that?

21 MR. SMITH: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SMITH: Government calls Agent McCurdy.

24 THE COURT: Okay. He has been sworn in this case
25 for sure now, so come on up and be seated.

1

MIKE MCCURDY,

2

having been first duly sworn, testified as follows:

3

DIRECT EXAMINATION

4

BY MR. SMITH:

5

Q. Will you please state your name.

6

A. Mike McCurdy.

7

Q. And your current occupation?

8

A. I'm a Special Agent with Homeland Security

9

Investigations.

10

Q. And are you familiar with the case against

11

Mr. Nimerfroh?

12

A. Yes, sir, I am.

13

Q. Will you please tell the Court how he's provided

14

substantial assistance in the prosecution of others.

15

A. Mr. Nimerfroh provided information against two of his

16

codefendants in the current round of the investigation, namely

17

Holly Frantzen and Nikie Frye. Additionally --

18

Q. And both of those individuals have pled guilty; is

19

that right?

20

A. Yes, sir, that is correct. Additionally, going from

21

memory, Mr. Nimerfroh provided information against two future

22

potential targets of the investigation.

23

Q. And you've written those down on Government's Exhibit

24

1; is that right?

25

A. Yes, sir.

1 *MR. SMITH:* The government would offer that and ask
2 that it be sealed, Your Honor, Government's Exhibit 1.

3 *THE COURT:* Okay. Where is it?

4 *MR. SMITH:* The witness has it.

5 *THE COURT:* Okay. Hand it over here.

6 Have you shown that to defense counsel?

7 *MR. SMITH:* Yes, Your Honor.

8 *THE COURT:* Okay. Go ahead. And I'm receiving
9 Government's Exhibit 1, and I will treat it as a sealed
10 document.

11 *Q* *(BY MR. SMITH)* And those are the two individuals, the
12 two future targets that Mr. Nimerfroh has provided information
13 about; is that right?

14 *A.* Again, I went off memory to come up with those names,
15 but to the best of my recollection, yes, sir.

16 *THE COURT:* You're uncertain about that?

17 *THE WITNESS:* I'm not 100 percent, Your Honor. I
18 don't have the information with me to refresh my memory, so --

19 *THE COURT:* Okay. That's fine.

20 *Q* *(BY MR. SMITH)* Are you thinking there could be more, or
21 those are the two that you know for sure?

22 *A.* I believe it's two, but in the -- one of the names on
23 there, I'm not certain if Mr. Nimerfroh provided information
24 about that individual or a different individual.

25 *MR. SMITH:* Okay. No further questions, Your Honor.

1 THE COURT: Okay. Do you have any questions you
2 want to ask?

3 MR. GREEN: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 **BY MR. GREEN:**

6 Q. The Aryan Brotherhood of Texas, would you say that's
7 a dangerous gang?

8 A. Yes, sir, I would.

9 Q. A violent gang?

10 A. Yes, sir.

11 Q. Are their leadership now in jail or prison as a
12 result of the government's investigation?

13 A. Are their -- I'm sorry?

14 Q. Are a lot of their leaders jailed because of this
15 investigation?

16 A. Some of their leaders are jailed because of this
17 investigation, yes, sir.

18 Q. And would you say that Mr. Nimerfroh's assistance was
19 substantial?

20 A. As it relates to those individuals?

21 Q. No, just to your investigation.

22 A. It was helpful.

23 Q. Okay. And did -- other than Homeland Security,
24 didn't he also give information to the DEA?

25 A. He gave the information to Homeland Security and DEA

1 jointly.

2 Q. Okay. And did he also give also information to
3 Arlington police and the Denton police on prior arrests?

4 A. He gave information to Homeland Security and the
5 Arlington police jointly. I'm not aware of any information he
6 provided to the Denton police.

7 MR. GREEN: Okay. Pass the witness.

8 THE COURT: Do you have anything else you want to
9 ask him?

10 MR. SMITH: No, Your Honor.

11 THE COURT: Okay. You can be seated.

12 THE WITNESS: Yes, sir.

13 THE COURT: I cannot find from the evidence that the
14 defendant has provided substantial assistance to the
15 government in the investigation and prosecution of others. I
16 think he's provided helpful information, but not substantial
17 assistance.

18 Okay. You and your client can come to the -- so I'm
19 denying the government's motion. Of course, I'll take into
20 account in the sentencing decision what I've heard.

21 Okay. Mr. Green, you can make whatever statement or
22 presentation you would like to make on behalf of your client
23 at this time.

24 MR. GREEN: Thank you, Your Honor. And I have some
25 brief evidence towards that, if I could call a witness.

1 THE COURT: Yes.

2 MR. GREEN: Melissa, can you come up?

3 THE COURT: You have somebody you want to speak from
4 the podium?

5 MR. GREEN: Or the witness stand, whichever is
6 easier for you Judge.

7 THE COURT: Well, if it's just somebody to make a
8 statement, she can do it from the podium. You don't have to
9 call her to the witness stand.

10 Come on up here to the microphone behind the podium.

11 MR. GREEN: Stay there.

12 THE COURT: Why don't you say what your name is.

13 MS. MELISSA RIGGS: Melissa Riggs.

14 THE COURT: And what city do you live in?

15 MS. MELISSA RIGGS: Arlington, Texas.

16 THE COURT: Okay. Go ahead and make whatever
17 statement you would like to make on behalf of the defendant.

18 MS. MELISSA RIGGS: I got a phone call from my
19 brother a couple of days ago, and I'm worried for his life.
20 There's a death threat on him, and it's from the Aryan
21 Brotherhood, and I don't want anything to happen to him, and
22 that's not fair that he's going to be stuck in there with them
23 and he might not come home because they might kill him.

24 THE COURT: Okay. Anything else?

25 MS. MELISSA RIGGS: No, sir.

1 THE COURT: Okay. Thank you for coming up here.

2 Okay. Was there someone else who wanted to make a
3 statement?

4 MR. GREEN: Yes, Your Honor. Heather.

5 THE COURT: Okay. And what is your name?

6 MS. HEATHER SCHWAB: Heather Schwab.

7 THE COURT: Okay. And where do you live?

8 MS. HEATHER SCHWAB: Carrollton, Texas.

9 THE COURT: Okay. Go ahead and make whatever
10 statement you would like to make.

11 MS. HEATHER SCHWAB: Your Honor, Tim is my
12 half-brother and he did not grow up with me. He had a very
13 hard, hard life with his father, which I believe, in my
14 opinion, is a lot of -- just bad in his life. He wasn't given
15 opportunities that I was given, which was very unfortunate.

16 I believe that he does accept responsibility for
17 what he's done. I believe he accepts responsibility for the
18 hurt that he and my sister has caused our family.

19 And I'm not going to ask you to show mercy, but I am
20 going to ask you to keep in mind, he's 45 years old. I want
21 to be able to someday -- I'm not no spring chicken myself, and
22 I would like to someday see him again.

23 And it's also very unfortunate that 7 years ago, to
24 the date, my mother got sick and died, and this is happening
25 on this day, but I just want you to know that I know that he

1 is very remorseful. And my daughter's here, whom he's never
2 met, and she's here to support him because we're just a
3 connected family, and regardless of anything else, we're just
4 a connected family.

5 *THE COURT:* Okay. Thank you.

6 Okay. Mr. Green, why don't you and your client come
7 back to the microphone, and you can make whatever statement
8 you would like to make on behalf of your client at this time.

9 *MR. GREEN:* Thank you, Your Honor.

10 Mr. Nimerfroh, as he's about to tell you, has
11 received a direct death threat from Shawn Cropp, who is one of
12 the leaders.

13 *THE COURT:* From who?

14 *MR. GREEN:* Shawn Cropp, a codefendant in this case,
15 who is one of the leaders of the Aryan Brotherhood. This has
16 been communicated to him inside the Johnson County Jail. I
17 contacted Sheriff Alford's office, and they moved him into a
18 security. Because of that, they take it as credible.

19 Whatever Mr. Nimerfroh told the law enforcement
20 obviously got some people riled and they are after him for it,
21 so he gave -- I believe we would ask you to reconsider based
22 on these facts. And as you heard from his sister, you know,
23 she knows about it, and she's not even involved in the case,
24 so reconsider the substantial assistance to law enforcement
25 here. And also that the Aryan Brotherhood is a known and

1 violent prison gang.

2 Also Mr. Nimerfroh is about to tell you that the
3 people in the Aryan Brotherhood have been writing different
4 U.S. prison facilities to be on the lookout for him, and TDC
5 facilities when he gets there. So whoever he informed on, you
6 know, he helped put somebody in jail, obviously, and they are
7 out to get him.

8 Also, as you know from, I believe, Inmate Shulty
9 (sic), he was attacked in FCI Fort Worth and almost beat to
10 death for these same reasons, and Mr. Nimerfroh will tell you
11 one of the other inmates told him that they were going to
12 attack him two days ago. That's why he had to be put in
13 protective custody, to stop him from coming to court today
14 because they think he's going to be here testifying against
15 somebody.

16 Mr. Nimerfroh was released from Texas Department of
17 Criminal Justice, you know, less than a year before this
18 offense. He actually, as it's related in the PSR, he kept
19 clean, he worked two jobs, and he actually worked for a
20 company that I work for, which is kind of interesting because
21 they don't let drug addicts and slackers work there.

22 He's also an exceptional artist.

23 *THE COURT:* What company is that that you work for?

24 *THE DEFENDANT:* Upstage USA, Your Honor.

25 *THE COURT:* Okay.

1 MR. GREEN: It does like -- if somebody's putting on
2 a production or show, they do all the transportation and
3 setting up of that.

4 THE COURT: I thought you said it was a company you
5 also worked for.

6 MR. GREEN: A related company, yes, Your Honor, I do
7 legal work for a related company, so I know of this. They
8 drug test employee employees and everything. You know, no
9 dirty UAs.

10 He also had a job as a custom tattoo artist, and
11 Mr. Nimerfroh, as he told the probation officer, quit that job
12 when he started using methamphetamine again because he
13 couldn't do the quality work that he was used to doing.

14 The PSR clearly shows some mitigating factors
15 towards a sentence here for Mr. Nimerfroh. He had a poor life
16 as a child, and as his sister told you, he didn't have very
17 many chances. He was raised in a home strife with alcoholism
18 and neglect, abuse.

19 He started abusing alcohol and drugs as a teenager,
20 a young teenager, and he has not had a chance at clinical
21 rehabilitation. His trips to the Colorado State Penitentiary
22 and to the Texas Penitentiary did not involve a trip to SAFP
23 as a condition of probation. That's an opportunity he really
24 needs, and he's going to ask the judge to tell the BOP to send
25 him to the drug treatment facility. If he doesn't get the

1 time credit, he wants that treatment and that will make a big
2 difference in his life.

3 He hasn't had that chance, and I would like you to
4 take that into consideration in your sentence, that he hasn't
5 had a chance to get professional drug treatment by the
6 authorities, even though he's been in trouble so many times.

7 Also, we would like you to please consider the short
8 duration of his conduct in this conspiracy. As the PSR
9 reflects, he got out of prison and was doing right. He got in
10 with, you know, the girl Nikie Frye there, and got hooked on
11 meth again. He was only involved in months, not years, before
12 the police popped him with Stevie Soule with all those drugs
13 on her.

14 And after a period of working this case and he
15 stayed sober, you know, that's the things that have kept him
16 straight. He does have a family out there. He has a wife and
17 child. He's kept them away from this offense. So we would
18 like you to reconsider if he did provide substantial
19 assistance given the fact that the Aryan Brotherhood is
20 threatening his life and the sheriff's department thinks
21 that's serious enough to put him in seclusion and investigate
22 that.

23 And that also, consider in mitigation the
24 circumstances that Tim -- you know, I've had a lot of bad
25 criminal clients, and he's not a bad guy. He's not the kind

1 of person that you would have to worry about, you know,
2 killing you or something in your sleep, or even robbing your
3 stuff. He just has a very bad drug problem, and he can't get
4 off it without help from the Court, and he's asking that, and
5 he's asking for a lower sentence so he could take care of that
6 family of his and keep straight.

7 Also, Your Honor, that given his age, a sentence in
8 the guidelines would be, in fact, a life sentence very likely,
9 the effect of a life sentence. He would be in there until
10 he's quite old, and that would probably be unfair given that
11 it's drug possession and drug dealing involving other drug
12 dealers. There's no allegation here that he sold drugs to
13 children or got children hooked on drugs or used any violent
14 means. Thank you, Your Honor.

15 *THE COURT:* Okay. Mr. Nimerfroh, you have the right
16 to make any statement or presentation you would like to make
17 on the subject of mitigation, that is, the things you think
18 the Court should take into account in determining what
19 sentence to impose, or on the subject of sentencing more
20 generally, and at this time I'll invite you to do that.

21 *THE DEFENDANT:* Your Honor, I've been a drug addict
22 since I was 13 years old. I grew up with it with my dad, and
23 alcoholism, and basically I just have not been able to kick
24 this addiction. And so when I try to feed my addiction and
25 support my habit, I do not -- I do not deny the fact that I

1 sold drugs to support my habit, and I take full responsibility
2 for what I've done and ask mercy of the Court.

3 I'm sorry for the crimes I committed against the
4 United States and against my family, you know, that hurt that
5 I've given them. I just ask that you please show mercy to me.
6 You know, I don't want to die in prison. Those guidelines are
7 huge, man. I mean, I don't know what else to say, Your Honor,
8 but I just ask that you show mercy on me.

9 *THE COURT:* Okay. Anything else?

10 *THE DEFENDANT:* And the death threats are real. The
11 lady that I informed on, Holly Frantzen, her husband is a
12 member of Aryan Brotherhood, and they are real upset with me
13 over this, and to come out here with nothing would just --
14 would be terrible, man. There's a good chance that I'll
15 probably get killed in prison by informing on Holly Frantzen,
16 and I just ask you to consider that, Your Honor.

17 *THE COURT:* Okay. On the substantial assistance
18 issue, the Section 5K1.1 motion, as I've indicated, I have not
19 been persuaded that the defendant has provided substantial
20 assistance to the government in the investigation or
21 prosecution of another person who has committed an offense,
22 though he has been -- provided helpful information, and I've
23 had testimony to that effect, so I'm not giving him --
24 considering that a downward departure under 5K1.1 is
25 appropriate.

1 However, I am going to consider the factors the
2 Court would consider in determining the degree of departure,
3 if the Court had concluded that a departure was appropriate,
4 in evaluating where within the -- where the sentence should
5 be, and those factors are the evaluation of the significance
6 and usefulness of his assistance, taking into consideration
7 the government's evaluation of the assistance rendered. Well,
8 the government has evaluated it as being helpful, so I'll take
9 that into consideration.

10 The next factor is the truthfulness, completeness,
11 and reliability of any information or testimony provided by
12 the defendant. Well, I haven't received information that
13 would give me the ability to make a definitive finding on
14 those subjects, though I will assume that he has provided
15 truthful information for the sake of discussion.

16 And the nature and extent of defendant's assistance,
17 well, we've already talked about that.

18 Any injuries suffered or danger or risk of injury to
19 the defendant or his family resulting from his assistance.
20 Well, I assume from that, that all of the -- with respect to
21 that, that all of the defendants who have cooperated with the
22 government in this case have some risk of injury, and so I
23 assume that there is some risk of injury.

24 And I don't know that I can make an evaluation as to
25 the timeliness of the assistance he provided, so there's not

1 much I can do with that.

2 I've concluded that -- and another factor that I
3 need to take into account is the defendant's criminal history.
4 It turns out that, perhaps more defendants than not in this
5 series of cases we've had related to the methamphetamine,
6 broad methamphetamine conspiracy, the defendants have had
7 tremendously bad criminal history cate- -- criminal histories.

8 In this case, it starts at age 19, when he was
9 convicted of burglary in the second degree. He was charged
10 with first degree burglary, conspiracy, assault in the third
11 degree, criminal mischief, and burglary in the second degree.
12 He was convicted of the fifth count, and I don't have enough
13 information to tell me whether there was evidence to support
14 the first ones.

15 He was given a probated sentence, but then he
16 violated that probation, and it was revoked and he got a
17 sentence of imprisonment of 4 years; and then he was released
18 on parole a year later, about a year-and-a-half later, and
19 then he violated his parole and it was revoked, and then he
20 finally served that sentence out.

21 And then at age 21, he was convicted of forgery by
22 passing, and he got a 3-year sentence on that, and then he was
23 paroled and he finally discharged that parole.

24 Then at age 26, he was convicted on an offense of
25 dangerous drugs, and he got a term of parole and then he

1 escaped from the community corrections facility. And then
2 after that, he was arrested and he was returned to custody
3 with a new sentence of escape.

4 Then he was released on parole, and that parole was
5 revoked because he violated a condition of that parole, and he
6 finally served that sentence out in 2007, and that was a
7 sentence imposed in 1998 based on an offense he committed at
8 age 26.

9 Then at age 28, he was arrested in -- looks like in
10 Colorado, and he pleaded guilty to some offense, got a 1-year
11 sentence of imprisonment and 2 years parole. He was released
12 on parole, violated the conditions of that parole and it was
13 revoked. Apparently that was running parallel to the offense
14 that I mentioned immediately before that one. He finally
15 discharged that sentence in 2007.

16 At age 31, he was convicted of possession of a
17 controlled substance. He got a 1-year sentence.

18 Age 36, he was convicted of possession of a
19 controlled substance, morphine, and he pleaded guilty and got
20 an 18-month sentence on that.

21 At age 36, he was convicted of unlawful possession
22 of a firearm by a felon. He got a 3-year sentence, he was
23 released on parole, and then he violated his parole and that
24 was revoked. He was -- then finally discharged that sentence
25 in 2010. And the description in paragraph 81 of the offense,

1 paragraph 81 of the Presentence Report, indicates that it was
2 a serious offense. Of course, all of these are serious
3 offenses.

4 And then at age 36, he pleaded guilty to credit card
5 abuse and got an 18-month sentence.

6 Again at age 36, he was convicted of theft of
7 property. He got an 18-month sentence. Apparently that ran
8 parallel with the one I mentioned immediately before that.

9 And then at age 38, he was convicted of possession
10 with intent to deliver a controlled substance. That was
11 methamphetamine.

12 In addition to those convictions, he has been
13 charged with criminal conduct on a number of occasions where
14 there wasn't a conviction, but I can tell from the description
15 of the offenses that in many of those cases he actually did
16 commit the offenses, and I find from a preponderance of the
17 evidence that he did, and that applies to the offense
18 described in paragraph 68 that occurred at age 31; the conduct
19 described in paragraph 69 that occurred at age 34; the conduct
20 described in paragraph 70 that occurred at age 34; the conduct
21 described in paragraph 71 that occurred at age 38; and the
22 conduct described in 72 that occurred at age 38. In some of
23 those instances, it refers back to earlier paragraphs in the
24 Presentence Report, and, of course, that's what I'm relying
25 on.

1 If it were not for the factors that have been argued
2 in support of a reduced sentence, I probably would be
3 sentencing this defendant to 480 months, considering all of
4 the factors the Court should consider in sentencing under 18
5 United States Code Section 3553(a).

6 I'm going to take into account the help he's
7 provided the government and the factors that I mentioned in
8 going over the 5K1.1 factors that the Court should consider in
9 determining what a reduction should be, if the Court were to
10 conclude a reduction is appropriate.

11 Even though I haven't concluded that he qualifies
12 for a reduced sentence, I am going to take into account those
13 factors, as well as the other factors that his attorney has
14 mentioned, and I'm going to sentence at the very bottom of the
15 advisory guideline range of 360 months.

16 That sentence would run consecutively to any
17 sentence in his parole violation Case Number 1186065D. That's
18 in the 297th District Court of Tarrant County, Texas.

19 In addition to that, there would be a term of
20 supervised release of 5 years that would follow after
21 completion of the sentence of imprisonment, and an obligation
22 to pay a special assessment of \$100, and that's payable
23 immediately.

24 So the Court's ordering and adjudging that the
25 defendant be committed to the custody of the Bureau of Prisons

1 to serve a term of imprisonment of 360 months.

2 Now, I failed to mention that that term of
3 imprisonment is to run concurrently with any sentence imposed
4 in the 297th District Court of Tarrant County, Texas in Case
5 Number 14296631, but consecutively to that other matter I
6 mentioned, the Case Number 1186065D.

7 I'm also ordering that the defendant serve a term of
8 supervised release of 3 years that would start once he's
9 completed his sentence of imprisonment, and the conditions of
10 that --

11 *(Bench Conference with Courtroom Deputy)*

12 *THE COURT:* I'm sorry, I misspoke. The term of
13 supervised release is to be 5 years and not 3 years. I
14 misspoke.

15 So I'm ordering that he serve a term of supervised
16 release of 5 years to start when he's completed his sentence
17 of imprisonment, and he, while on supervised release, will
18 comply with the standard conditions that will be set forth in
19 the judgment of conviction and sentence, and the following
20 additional conditions:

21 He shall not commit another federal, state, or local
22 crime.

23 He shall not possess illegal controlled substances.

24 He shall cooperate in the collection of DNA as
25 directed by the probation officer and as authorized by the

1 Justice for All Act of 2004.

2 He shall refrain from any unlawful use of a
3 controlled substance, and shall submit to one drug test within
4 15 days of release from imprisonment and at least two periodic
5 drug tests thereafter as directed by the probation officer.

6 He shall participate in mental health treatment
7 services as directed by the probation officer until
8 successfully discharged, and those services may include
9 prescribed medications by a licensed physician, and he'll
10 contribute to the cost of those services at the rate of at
11 least \$25 a month.

12 He shall participate in a program approved by the
13 probation officer for treatment of narcotic or drug or alcohol
14 dependency that will include testing for the detection of
15 substance abuse, and he shall abstain -- substance use, not
16 abuse. The testing will be for detection of substance use,
17 and he shall abstain from the use of alcohol and all other
18 intoxicants during and after completion of that treatment, and
19 he'll contribute to the cost of those services at the rate of
20 at least \$25 a month.

21 I'm also ordering that the defendant pay a special
22 assessment of \$100, and that's payable at the time of
23 sentencing.

24 Mr. Nimerfroh, you have the right to appeal from the
25 sentence I've imposed, if you're dissatisfied with it. That

1 appeal would be to the United States Court of Appeals for the
2 Fifth Circuit.

3 You have the right to appeal in forma pauperis, that
4 means without any cost to you, if you were to qualify for it.
5 You have the right to have the clerk of court file a notice of
6 appeal for you, and the clerk would do that forthwith, if you
7 were to specifically request it.

8 You and your attorney have been given a form that
9 outlines certain rights and obligations in reference to an
10 appeal. If you haven't already done so, I want the two of you
11 to review that and be sure you understand it, and once both of
12 you are satisfied you understand it, I want both of you to
13 sign it and return it to the court coordinator.

14 Has that been done, Mr. Green?

15 MR. GREEN: The court coordinator already has that
16 document, Your Honor.

17 THE COURT: Pardon?

18 MR. GREEN: She already has that document, Your
19 Honor.

20 THE COURT: Are you satisfied your client
21 understands it?

22 MR. GREEN: Yes, Your Honor.

23 THE COURT: And did both of you sign it?

24 MR. GREEN: Yes, Your Honor, we both signed it.

25 THE COURT: Okay. The defendant's remanded to

1 custody, and you're excused, Mr. Green.

2 You're excused, too, Mr. Smith.

3 COURT SECURITY OFFICER: All rise.

4 (End of Proceedings)

5 **REPORTER'S CERTIFICATE**

6 I, Debra G. Saenz, CSR, RMR, CRR, certify that the
7 foregoing is a true and correct transcript from the record
8 of proceedings in the foregoing entitled matter.

9 I further certify that the transcript fees format
10 comply with those prescribed by the Court and the Judicial
11 Conference of the United States.

12 Signed this 28th day of February, 2017.

13
14 /s/ Debra G. Saenz

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